

Mr. WARNER. An objection will be interposed, and we will discuss the objection with the Senator from Nebraska.

At this time, I ask unanimous consent that the pending amendment be temporarily laid aside, such that the managers can continue with other amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. Mr. President, the managers are continuing to make steady progress. We retain our hope that we can vote on final passage before 12 noon. I urge those very few Senators—it is down to two or three Senators now that would require further reconciliation of their views.

Mr. President, on a personal matter, if I might make a few remarks. I commend the chairman of the Environment and Public Works Committee. Twenty-five years ago, I first met the then Governor of Rhode Island. In 1969, we formed a team in the Department of the Navy where he, as Secretary, and I, as principal deputy and Under Secretary, undertook a task at the height of the Vietnam war to give leadership to the Department of the Navy and to participate in other activities in the Department of Defense.

Now, 25 years later, we are still together. I do not say this with regret, but I do note that he is still the boss and I am still the first deputy, so not much has changed in a quarter of a century. There sits a man that has always stepped forward to lead in this country, be it in the time of war, as he did in World War II, as a marine fighting in the Pacific, and then being recalled back to duty during the Korean conflict, as a captain, company commander, and then as Governor. And now as a U.S. Senator, he has distinguished himself as a public servant. He is greatly respected in the U.S. Senate, as well as in his own State. It is a privilege for me to once again be in partnership, but as always, No. 2.

I thank the Chair.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from Virginia for his generous remarks. He is right that in our long-time friendship we have worked together. It has not been a one-two relationship. It has been a partnership. He and I worked together in the Defense Department starting in January 1969 in the Navy, as Secretary and Under Secretary, and we were in those posts together for 3½ years.

The distinguished Senator from Virginia then became Secretary of the Navy and went on after that to head the bicentennial commission, was elected to the U.S. Senate in 1978, and he has served here with great distinction. So it is indeed a marvelous friendship and association that we have had together. And now on the Environment Committee, where he is handling this legislation so effectively, doing such an excellent job as chairman of the subcommittee dealing with this type of legislation.

So I thank my long-time friend—I will not say “old” friend, but “long-time” friend—for the joys that we have had together and the joint achievements that I believe we have accomplished.

Mr. WARNER. Mr. President, I thank my good friend and colleague. I hope we have many more years working together here in the U.S. Senate.

I note the presence on the floor of the Senator from Maine. I extend to him an apology. On two occasions I have indicated the clearance of the Senator's amendment. But subsequent thereto, objections arose. I believe it is now resolved, and I would appreciate if the Senator from Maine could advise the managers. The Senator from Virginia will continue to ascertain the status of the Senator's amendment. I am hopeful that it can be resolved. I thank the Senator from Maine, however, for his patience on this matter.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COHEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COHEN. Mr. President, I ask unanimous consent that I be allowed to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maine is recognized.

THE NOMINATION OF DR. HENRY FOSTER

Mr. COHEN. Mr. President, I would like to offer a few comments on the nomination of Dr. Foster to be Surgeon General. We are going to have further debate this afternoon. We are going to have one more rollcall vote in terms of whether or not the proceedings should come to a close and a vote take place on Dr. Foster.

I must say that this is one of those issues which has really galvanized the American people, those who are interested in this issue. We have letters and calls pouring into our offices from those who are strongly in favor, and those who are equally determined to oppose his nomination. The rhetoric is hot. It is, in fact, intemperate. I think the passion of the letters finds its voice right here in the U.S. Senate. That voice, at times, is angry, raw, and even ugly.

Mr. President, the charge has been made that we are sacrificing Dr. Foster on the altar of right-wing radicalism. I must say that there have been a number of good and decent people who have found their integrity and character shredded on the altar of left-wing liberalism. That is one of the problems that I see taking place in this Chamber and elsewhere. There seems to be a double standard on display, what we might call a case of situational ethics.

What comes to mind is the debate that took place when Ronald Reagan, for example, nominated Robert Bork to be a member of the Supreme Court. I recall that debate very well. Judge Bork's writings were plucked from the past. Those writings were provocative. He was, in fact, a provocative professor who challenged conventional wisdom. He disagreed with the rationale that was found and articulated in *Roe versus Wade*. He found no right of privacy lurking or hidden in the penumbra of the Constitution.

What took place with Bob Bork is that he was demonized. It was charged that he would take us back to the boneyard of conservatism, to the dark ages, maybe even to hell itself. I say that by virtue of a photograph that I remember that was on the cover of *Time* magazine.

It was a portrait, a photograph, of Robert Bork with his judicial robes on looking much like a cape. Of course, he had the beard. There was a red glow to the entire cover. And one could almost see the hint of horns emerging from the top of his head. One would have thought that Mephistopheles himself was about to be appointed to the Court, would corrupt the Court, would rip up the Constitution and shred our rights of privacy.

I might point out, sometime thereafter Judge Ruth Bader Ginsburg, who actually was endorsed by Robert Bork, also found fault with the Court's reasoning in *Roe v. Wade*. She said the Court had reached the right result but for the wrong reason. Yet we did not hear much criticism coming from the left, the liberal element in our society, at that time.

I mention that because I think we are reaching a point in the confirmation process in which it is going to be very difficult to have good and decent people willing to step forward and subject themselves to the confirmation process. My own friend, John Tower—I think what took place in this Chamber against John Tower was a disgrace. I saw a good man who had his character shredded by allegations and innuendo and false charges. He was so bloodied up that the critics said, “He has been too damaged to be a successful Secretary of Defense. President Bush, why don't you just cut him down from that tree that he is swinging from and take him back to Texas?” So we saw another challenge to an individual which I felt was unwarranted.

How many Republican nominees were rejected because of membership at all-white clubs? It did not matter that they were not racist. It did not matter that they had employed blacks or Hispanics or other minorities in their businesses or even in their homes. If they were members or had memberships in an all-white club, that was enough to bring down their nomination.

The same rule, however, was not applied when it came to people like Webster Hubbell, who also belonged to an

all-white club at that particular point. But we had a different standard imposed.

So I suggest we have to get away from this double standard that when those who raise questions about someone's nomination by virtue of their difference of philosophy, that we not charge it is based upon right-wing radicalism any more than it is based on left-wing radicalism. We have to put a stop to this situation. We have to remember that Bill Clinton won the election. He is the President of the United States. It is my own judgment he is entitled to the nominees of his choice.

We may disagree with those nominees, but every time we disagree with Bill Clinton's philosophy, President Clinton's philosophy, or that of the individuals he nominates, we should not then, by virtue of our disagreement with their ideology or practice, turn it into a character issue and then begin an all-out assault on character.

We obviously have a duty to challenge philosophy and policies when they are fundamentally in conflict with our own. But we also have to deal fairly with these individuals. We have to remember, also, the axiom that bad appointments make bad politics. The President of the United States, when he makes an appointment, is held accountable for that individual's record, that individual's character, that individual's performance. And, barring evidence of incompetence as far as technical qualifications are concerned, professional qualifications, barring clear and convincing evidence of moral deficiencies that would prevent that person from occupying that position, I think we have an obligation to confirm the President's nominees.

What we have to stop in this system is, really, shredding the character of the individuals who come before the body for confirmation. If we disagree philosophically, let us be very up front about it and base it on that. What I see taking place is something of a variation of what Senator MOYNIHAN of New York talked about in his brilliant piece a couple of years ago, called "Defining Deviancy Down." What he was talking about at that time was events that took place in the 1920's or 1930's, some decades ago, that we would look at and say, "What a horrible thing that was." The Saint Valentine's Day massacre was one he pointed to. There were, as I recall, seven people involved in that. Four were killed by three others, or vice versa. That incident made worldwide news. It has gone in the history books. Today, it is likely that might not appear in bold headlines in the Metro section of the New York Times or the Post or elsewhere.

We have seen so much violence spread in our society we have become inoculated against it, almost. We have been immunized against a sense of outrage about the level of deviancy because we defined it down.

It seems to me we have to also talk about defining civility down. We have,

I think, lost some of our moorings. We now resort not only to challenges of philosophy but to challenges of character. In doing so, I think we have lowered the standard for civil debate and discourse in this country.

The anger we see outside of these Chambers is being reflected inside the Chambers. We do not want to tolerate or promote barbarism outside the gates. We do not want to promote it inside the gates. I think what we have to do is lower the rhetoric and the charges and the countercharges about who is sacrificing whom on which altar and stop imposing double standards and situational ethics and come back to what I believe to be the correct standard. Either we find Dr. Foster to be medically, professionally unqualified to serve in this position, or we find him to be so morally bankrupt that it would be a discredit and an injustice to have him serve in that position.

Frankly, I do not find that we have measured up to that burden of proof. I believe Dr. Foster is a good and decent man. I believe President Clinton is entitled to have his nominee confirmed, even though we might disagree or I might disagree with his particular views or practice. Nonetheless, that is not the test that should be imposed. The test should be, Is he professionally qualified and does he have a moral character to serve in that position?

There are those on this side who believe fundamentally he has misrepresented the number of abortions that he performed during the course of a long practice. That is, perhaps, a legitimate issue to be raised. But I do not think we ought to be engaged in savaging each other, in attacking each others' motives. This is a serious issue and is one that ought to be debated in that fashion without resorting to a lot of hurtling of invective.

Mr. President, I hope my colleagues will in fact allow a consideration of Dr. Foster on the merits. That was in fact allowed for Judge Bork. He was defeated. It was allowed for Senator Tower, whose nomination was also defeated, and others whose names never really made it to the floor by virtue of their membership in what were described as racist clubs or organizations.

My hope is that we can return to a level of civil discourse in this society of ours, rather than the shouting and the anger that we see being displayed from day to day, and really try to deal with these issues on the merits.

I think Dr. Foster is entitled to have his name considered on the merits. We hope there will be enough Members who will vote to terminate any attempt to filibuster his nomination.

Seeing the hour of 11:30 is about to be reached, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL HIGHWAY SYSTEM DESIGNATION ACT

The Senate continued with the consideration of the bill.

Mr. WARNER. Mr. President, on behalf of the management, we continue to make good progress. It is obvious we will not have a vote before 12 o'clock, at which time under the previous order the Senate then goes forward to debate the Foster nomination.

Mr. BAUCUS. Mr. President, I thank the Senator. I do not know if the Senator knows this, but Senator EXON has withdrawn both his other amendments.

Mr. WARNER. Good.

Mr. BAUCUS. The only potential amendments remaining, in addition to the managers' amendment, are potential amendments by Senator LAUTENBERG, Senator NICKLES, Senator SARBANES, Senator SMITH, and Senators STEVENS and MURKOWSKI.

Mr. WARNER. Mr. President, I am pleased to say to my colleague—and to announce to the Senate—that Senator SMITH's amendment is now in a situation where it will be resolved. I am not sure of the final outcome. But we will be informed.

Mr. CHAFEE. There will be an amendment.

Mr. WARNER. There will be an amendment, which I have learned of from the distinguished chairman of the committee.

Mr. CHAFEE. Mr. President, the Smith amendment we are working out now, and the language. It is my understanding that will be an amendment that will be acceptable.

Mr. BAUCUS. It may be acceptable. We are still running the trap lines over on this side.

Mr. CHAFEE. Well, in other words, I would not envision a vote on it.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF HENRY W. FOSTER, JR., TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon